



**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 1995 ASSEMBLY BILL 1076**

May 9, 1996 – Offered by Representatives WALKER and KLUSMAN.

1 **AN ACT to repeal** 101.123 (1) (dg), 134.66 (2) (c) 1. a., 134.66 (2) (c) 1. b., 134.66
2 (2) (c) 2., 134.66 (2) (c) 3. and 4. and 134.66 (2) (cm) 2. and 3.; **to renumber**
3 134.66 (3) (a); **to renumber and amend** 134.66 (2) (c) 1. (intro.), 134.66 (2) (cm)
4 1. and 134.66 (2) (d); **to amend** 47.03 (7), 77.54 (20) (c) 6., 101.123 (1) (c),
5 101.123 (2) (am) 1., 101.123 (2) (am) 2., 134.66 (1) (h), 134.66 (2) (a), 134.66 (2)
6 (b) 2. and 134.66 (3) (intro.); **to repeal and recreate** 134.66 (1) (k) and 134.66
7 (1) (L); and **to create** 48.983 (4m), 101.123 (1) (ah), 134.66 (1) (bn), 134.66 (2)
8 (c) 1m., 134.66 (2) (c) 2m., 134.66 (2) (d) 2. and 134.66 (3) (ab) of the statutes;
9 **relating to:** the sale and gift of cigarettes or tobacco products, to prohibiting
10 smoking in health care provider offices and in certain government buildings
11 and to locations and control of tobacco vending machines.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

12 **SECTION 1.** 47.03 (7) of the statutes, as affected by 1995 Wisconsin Act 27, is
13 amended to read:

1 47.03 (7) If the department decides that a business under sub. (4) would not
2 be feasible and profitable in any state building, the department may contract with
3 vending machine operators, as defined in s. 254.61 (10), to install vending machines,
4 as defined in s. 254.61 (7), in the building, giving preference to blind operators of
5 vending machines. The department may, under the procedures established as
6 required under sub. (4) (b), charge the net proceeds of each business operating under
7 this subsection. The department shall deposit the moneys from the charges made
8 under this subsection in the appropriations under s. 20.445 (5) (h) and (hd) and shall
9 disburse the proceeds to provide services to blind persons under sub. (4) in
10 accordance with 20 USC 107 to 107f.

11 **SECTION 2.** 48.983 (4m) of the statutes is created to read:

12 48.983 (4m) A person who violates this section shall forfeit \$50.

13 **SECTION 3.** 77.54 (20) (c) 6. of the statutes is amended to read:

14 77.54 (20) (c) 6. For purposes of subd. 1., “premises” shall be construed broadly,
15 and, by way of illustration but not limitation, shall include the lobby, aisles and
16 auditorium of a theater or the seating, aisles and parking area of an arena, rink or
17 stadium or the parking area of a drive-in or outdoor theater. The premises of a
18 caterer with respect to catered meals or beverages shall be the place where served.
19 ~~Vending machine premises~~ The premises of a vending machine, as defined in s.
20 254.61 (7), shall include the room or area in which located.

21 **SECTION 4.** 101.123 (1) (ah) of the statutes is created to read:

22 101.123 (1) (ah) “Health care provider” means any of the following:

- 23 1. A nurse licensed under ch. 441.
- 24 2. A chiropractor licensed under ch. 446.
- 25 3. A dentist licensed under ch. 447.

- 1 4. A physician, podiatrist or physical therapist licensed under ch. 448.
- 2 5. An occupational therapist, occupational therapy assistant, physician
3 assistant or respiratory care practitioner certified under ch. 448.
- 4 6. A dietitian certified under subch. IV of ch. 448. This subdivision does not
5 apply after June 30, 1999.
- 6 7. An optometrist licensed under ch. 449.
- 7 8. A pharmacist licensed under ch. 450.
- 8 9. An acupuncturist certified under ch. 451.
- 9 10. A psychologist licensed under ch. 455.
- 10 11. A social worker, marriage and family therapist or professional counselor
11 certified under ch. 457.
- 12 12. A speech–language pathologist or audiologist licensed under subch. II of ch.
13 459 or a speech and language pathologist licensed by the department of public
14 instruction.
- 15 13. A partnership of any providers specified under subs. 1. to 12. that provides
16 health care services.
- 17 14. A corporation or limited liability company of any providers specified under
18 subs. 1. to 12. that provides health care services.
- 19 15. An operational cooperative sickness care plan organized under ss. 185.981
20 to 185.985 that directly provides services through salaried employes in its own
21 facility.
- 22 16. A hospice licensed under subch. IV of ch. 50.
- 23 17. An inpatient health care facility, as defined in s. 50.135 (1).
- 24 18. A community–based residential facility, as defined in s. 50.01 (1g).

25 **SECTION 5.** 101.123 (1) (c) of the statutes is amended to read:

1 101.123 (1) (c) “Office” means any area, whether publicly or privately owned
2 or occupied, that serves as a place of work at which the principal activities consist
3 of professional, clerical or administrative services, including any service offered by
4 health care providers.

5 **SECTION 6.** 101.123 (1) (dg) of the statutes is repealed.

6 **SECTION 7.** 101.123 (2) (am) 1. of the statutes is amended to read:

7 101.123 (2) (am) 1. Notwithstanding par. (a) and sub. (3) and except as provided
8 in subd. 2., no person may smoke in a motor bus, in a hospital ~~or in a physician’s office,~~
9 in an office of a health care provider or in any enclosed, indoor area of a state, county,
10 city, village or town building in which health care services are delivered to children
11 or pregnant women, except that jails and lockup facilities are subject to sub. (4).

12 **SECTION 8.** 101.123 (2) (am) 2. of the statutes is amended to read:

13 101.123 (2) (am) 2. ~~Notwithstanding subd. 1.,~~ a A person who is an adult
14 patient of a hospital or unit of a hospital that has as its primary purpose the care and
15 treatment of mental illness, alcoholism or drug abuse and who has the written
16 permission of a physician may smoke in a room that is designated as a smoking area
17 under sub. (4) (a) 2.

18 **SECTION 9.** 134.66 (1) (bn) of the statutes is created to read:

19 134.66 (1) (bn) “Give away” means to transfer for no consideration or to transfer
20 for consideration for advertising or promotional purposes outside the ordinary
21 business course of selling.

22 **SECTION 10.** 134.66 (1) (h) of the statutes is amended to read:

23 134.66 (1) (h) “School” has the meaning given in s. 118.257 (1) ~~(e)~~ (d).

24 **SECTION 11.** 134.66 (1) (k) of the statutes is repealed and recreated to read:

1 134.66 (1) (k) “Tobacco vending machine” is any mechanical device that
2 automatically dispenses cigarettes or tobacco products when money or tokens are
3 deposited in the device in payment for the cigarettes or tobacco products.

4 **SECTION 12.** 134.66 (1) (L) of the statutes is repealed and recreated to read:

5 134.66 (1) (L) “Tobacco vending machine operator” means a person who
6 acquires tobacco products or stamped cigarettes from manufacturers or permittees,
7 stores them and sells them through the medium of tobacco vending machines that
8 he or she owns, operates or services and that are located on premises that are owned
9 or under the control of other persons.

10 **SECTION 13.** 134.66 (2) (a) of the statutes is amended to read:

11 134.66 (2) (a) No retailer, manufacturer or distributor may sell ~~or give~~
12 cigarettes or tobacco products to ~~any person under the age of 18~~ a minor, except as
13 provided in s. 48.983 (3). A tobacco vending machine operator is not liable under this
14 paragraph for the purchase of cigarettes or tobacco products from his or her tobacco
15 vending machine by a ~~person under the age of 18~~ minor if the tobacco vending
16 machine operator was unaware of the purchase.

17 **SECTION 14.** 134.66 (2) (b) 2. of the statutes is amended to read:

18 134.66 (2) (b) 2. A tobacco vending machine operator shall attach a notice in
19 a conspicuous place on the front of his or her tobacco vending machines stating that
20 the purchase of any cigarette or tobacco product by a person under the age of 18 is
21 unlawful under s. 48.983 and that the purchaser is subject to a forfeiture of not to
22 exceed \$~~25~~ \$50.

23 **SECTION 15.** 134.66 (2) (c) 1. (intro.) of the statutes is renumbered 134.66 (2)

24 (c) (intro.) and amended to read:

1 134.66 (2) (c) (intro.) ~~Except as provided in par. (cm), no~~ No retailer may keep
2 a tobacco vending machine ~~in~~ within the premises of any ~~public~~ place that is open to
3 ~~persons under the age of 18~~ the general public unless all ~~any~~ of the following apply
4 applies:

5 **SECTION 16.** 134.66 (2) (c) 1. a. of the statutes is repealed.

6 **SECTION 17.** 134.66 (2) (c) 1. b. of the statutes is repealed.

7 **SECTION 18.** 134.66 (2) (c) 1m. of the statutes is created to read:

8 134.66 (2) (c) 1m. The tobacco vending machine is in a barroom, as defined in
9 s. 125.51 (3m) (a), located on premises described in a license issued under s. 125.26
10 or 125.51 (3).

11 **SECTION 19.** 134.66 (2) (c) 2. of the statutes is repealed.

12 **SECTION 20.** 134.66 (2) (c) 2m. of the statutes is created to read:

13 134.66 (2) (c) 2m. The tobacco vending machine is located in a portion of a
14 factory, business, office, club or other establishment to which members of the general
15 public and minors do not have access.

16 **SECTION 21.** 134.66 (2) (c) 3. and 4. of the statutes are repealed.

17 **SECTION 22.** 134.66 (2) (cm) 1. of the statutes is renumbered 134.66 (2) (cm) and
18 amended to read:

19 134.66 (2) (cm) Notwithstanding par. (c), no retailer may place a tobacco
20 vending machine in a school or within 500 feet of a school.

21 **SECTION 23.** 134.66 (2) (cm) 2. and 3. of the statutes are repealed.

22 **SECTION 24.** 134.66 (2) (d) of the statutes is renumbered 134.66 (2) (d) 1. and
23 amended to read:

24 134.66 (2) (d) 1. ~~No~~ Except as provided in subd. 2., no retailer, manufacturer,
25 distributor, jobber, or subjobber ~~or retailer, or their employes or agents, and no~~

1 employe or agent of a retailer, manufacturer, distributor, jobber or subjobber may
2 provide give away cigarettes or tobacco products for ~~nominal or no~~ consideration to
3 any person ~~under the age of 18~~.

4 **SECTION 25.** 134.66 (2) (d) 2. of the statutes is created to read:

5 134.66 (2) (d) 2. A retailer, manufacturer, distributor, jobber or subjobber or an
6 employe or agent of a retailer, manufacturer, distributor, jobber or subjobber may
7 give away tobacco products to a person who is at least 18 years of age.

8 **SECTION 26.** 134.66 (3) (intro.) of the statutes is amended to read:

9 134.66 (3) DEFENSE OF RETAILER, MANUFACTURER AND DISTRIBUTOR. (intro.) Proof
10 of all of the following facts by a retailer, manufacturer or distributor who ~~sells~~
11 allegedly sold cigarettes or tobacco products to a ~~person under the age of 18~~ minor
12 is a defense to any prosecution for a violation of sub. (2) (a):

13 **SECTION 27.** 134.66 (3) (a) of the statutes is renumbered 134.66 (3) (am).

14 **SECTION 28.** 134.66 (3) (ab) of the statutes is created to read:

15 134.66 (3) (ab) That the retailer, manufacturer or distributor requested to see
16 an identification card of the purchaser if an ordinary and prudent person would
17 believe that the purchaser had not attained the age of 25.

18 **SECTION 29. Initial applicability.**

19 (1) PENALTIES FOR CERTAIN VIOLATIONS. The treatment of sections 48.983 (4m)
20 and 134.66 (2) (a), (c) 1. (intro.), 1m. and 2m. and (cm) 1. and (3) (intro.), (a) and (ab)
21 of the statutes, the renumbering and amendment of section 134.66 (2) (d) of the
22 statutes and the creation of section 134.66 (2) (d) 2. of the statutes first apply to
23 violations committed on the effective date of this subsection.

24

(END)